

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GUADALUPE SOLIS ALVAREZ, No. CIV S-05-0689-DFL-CMK-P

Petitioner,

vs.

ORDER

JAMES YATES, et al.,

Respondents.

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 72-302(c)(21).

On October 21, 2005, the magistrate judge filed findings and recommendations herein which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within ten days. Petitioner has filed objections to the findings and recommendations.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
2 304, this court has conducted a de novo review of this case. The court declines to adopt the
3 findings and recommendations. Petitioner properly filed a notice that his address had been
4 changed, but failed to file a proof of service. The magistrate judge ordered petitioner to file the
5 proof of service by September 8, 2005. Petitioner did not do so. In the objections, petitioner
6 states that he did not comply with the court's order because he is illiterate and was not getting
7 adequate assistance at Corcoran prison. Petitioner has now complied with the court's order.
8 Given the nature of the violation – respondents had reason to know of petitioner's new address
9 since they transferred him – petitioner's explanation, and petitioner's eventual compliance, the
10 court declines to dismiss the petition. Petitioner is advised that a proof of service must
11 accompany all filings. Failure to do so in the future will cause the court to impose sanctions
12 which may include dismissal.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. The findings and recommendations filed October 21, 2005, are not adopted;

15 and,

16 2. The action is referred to the magistrate judge for further proceedings.

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18 DATED: 1/31/2006

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21 DAVID F. LEVI
22 United States District Judge
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